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**INTERPRETATIVE BULLETIN**

Lease of Real or Personal Property by  
Candidates and Political Committees

This Interpretative Bulletin provides guidelines to candidates and political committees regarding various issues arising from the lease of real or personal property by candidates and political committees.<sup>1</sup> Candidates and political committees which follow these guidelines will ensure that rental expenses for office space and equipment comply with the campaign finance law's record keeping requirements and restrictions against personal use.

The regulations promulgated under M.G.L. c. 55 state that candidates and political committees may make "reasonable and necessary expenses in connection with the operation of a campaign office or offices." These expenses may cover telephones, furniture, office rent and equipment, and utilities. 970 C.M.R. 2.05(2)(h).

Issues arise under the campaign finance law, however, when a candidate or political committee wishes to "share" the expenses of another office, or to sublet a portion of such office space. Additional issues are posed when a candidate or political committee wishes to lease real property, including office space, or personal property, from the candidate or an officer of the political committee, an entity in which such candidate (or officer) has an interest, or a person related to the candidate or committee officer.

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<sup>1</sup> The campaign finance law prohibits the purchase of real property by candidates or political committees. See M.G.L. c. 55, s. 6, which states that a political committee may place its funds in a savings account or money market to earn interest but may not invest its funds in other things of value in any other manner, and 970 CMR 2.07(7) which does not include real property among the investments which may be made by political committees.

Section 6 of M.G.L. c. 55 allows candidates and political committees to make political expenditures so long as such expenditures are not "primarily for the candidate's or any other person's personal use." The situations described in the preceding paragraph raise the question of personal use.

I. May a candidate or political committee share office space with or sublet such space from another organization?

**Yes.** As noted above, the campaign finance law allows a political committee to make expenditures for expenses incurred in connection with the operation of an office, including the payment of rent for a separate office space.

In addition, a candidate or political committee may share office space with or sublet such space from another organization, provided the fair market value<sup>2</sup> for such space (a pro rated portion of the lease and any utilities and other operational expenses) is paid by the candidate or political committee. Should the candidate or political committee pay less than the fair market rent, an in-kind contribution must be attributed to the person or organization leasing the office space to the candidate or political committee. Candidates and political committees, excluding ballot question committees, should note that in-kind contributions from business corporations, including "professional corporations" or "P.C.s," are prohibited under M.G.L. c. 55. Any services, facilities, supplies, utilities, equipment or personnel supplied by such corporations must be reimbursed in full by the candidate or political committee.

If a candidate or political committee shares equipment such as telephones, typewriters, computers and copiers, separate accounts must be kept by the candidate or political committee and the person or organization leasing the space. Separate accounts must also be kept if personnel, such as secretaries or receptionists, are shared. As required by M.G.L. c. 55, ss. 2 and 5, candidates and political committees must maintain detailed records for six years from the date of the relevant election. Maintaining such records will help to document compliance with the campaign finance law upon review by this office.

II. May a political committee lease office space from the candidate, from officers of the political committee, from entities in which a candidate or officer has an interest, or from persons who are related to the candidate or officers of the committee?

**Yes.** Such a lease is permitted, however, only to the extent the payments do not exceed the fair market rent of the property and the leased property does not include any part of any personal residence.

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<sup>2</sup> Fair market rent may be determined by reference to advertisements, appraisals, or leases for comparable property with similar terms in the same geographic area.

Payments for the use of a residence are prohibited because the expenses of maintaining a residence would exist regardless of the candidate's seeking election to public office. Moreover, residential space is not generally leased on the open market to be used for office space.

The office has consistently discouraged candidates and political committees from leasing office space from candidates, officers of committees, from entities in which a candidate or officer has an interest, or from family members of candidates and officers of committees. Such leases, if bona fide, are not, however, prohibited. A committee should maintain detailed accounts and records to document that the amount paid is equivalent to the fair market rent for the property, that the terms of the lease are commercially reasonable and that payments are promptly paid in accordance with the terms of the lease. A lease will be considered bona fide if it requires monthly payments of the fair market rent for the property.

Leases from candidates, officers of a committee, from entities in which a candidate or officer has an interest, or from persons related to the candidate or officers of the committee for non-residential property also raise personal use concerns, but to a lesser extent than leases of residential property. Such transactions typically do not reflect an "arms length" business relationship. For this reason, this office closely examines expenditures for the lease of office space.

Candidates and committees entering into such a lease should ensure that the lease is consistent with ordinary business practices and payments are for the fair market rent for the property. If payments exceed the fair market rent for the property, the expenditure would be for the personal use of the recipient and therefore would violate M.G.L. c. 55, s. 6.

The campaign finance law defines the term "contribution" to include both "discounts" and "advances." See M.G.L. c. 55, s. 1. If payments are less than the fair market rent for the property the candidate or committee leasing the property would receive a "discount," and if payments are not made in a prompt manner and in accordance with the lease, the committee would receive an "advance." An "advance," according to Webster's New Collegiate Dictionary, means "a provision of something (as money or goods) before a return is received." Assuming a bona fide lease for the fair market rent for property, an "advance" would be received if (1) the amount due under the lease is not promptly paid in accordance with the terms of the lease, and (2) the lessor does not take commercially reasonable collection action to recover the amount due.

If monthly lease payments, or a corresponding liability for unpaid rent, is not reported in the campaign finance reports filed by a candidate or committee, this office must presume that the lease is not bona fide. As noted above, if lease payments are not promptly made and the lessor does not take commercially reasonable collection action, an advance (i.e., a contribution) will be understood to have taken place. Therefore, amounts due under a lease should very rarely appear as a liability on a campaign finance report. However, if no

bill or notice due has been received by a candidate or committee in relation to a lease arrangement, the candidate's or committee's reports must still reflect a liability for the amount due.

III. May a political committee lease personal property, such as office equipment, from the candidate, from officers of the political committee, or from persons who are related to the candidate or officers of the committee?

**Yes.** As with leases for real property, leases for personal property are permitted only to the extent the payments over the life of the lease do not exceed the fair market value for the property and the primary purpose for entering into such lease is to allow the committee to use the property being leased. As with any expenditure, the payments made under a lease must be reasonable and necessary for the enhancement of the political future of the candidate or must enhance the principle for which the committee was organized.

If less than the fair market value is paid, or if payments are not made or collected in a commercially reasonable manner, a contribution (i.e., an advance or discount) must be attributed to the person from whom the property is leased.

#### IV. Conclusion

By law, candidates or political committees must maintain accounts of all campaign finance activity. See M.G.L. c. 55, ss. 2 and 5. Although not required by law, the office strongly recommends that candidates and political committee obtain written leases for office space and equipment, particularly when leasing space or equipment owned by candidates, officers of a committee, entities in which a candidate or officer has an interest, or persons related to the candidate or officers of the committee. Maintaining complete and accurate records including written leases significantly enhance a candidate or political committee's ability to demonstrate compliance with the campaign finance law.

If you have any questions or need further information regarding this bulletin or any other campaign finance matter please do not hesitate to contact this office.